

Ram Rakha Vs. Ramji Das

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Court : Delhi

Decided On : Jan-10-1968

Reported in : 4(1968)DLT196

Judge : Jagjit Singh, J.

Acts : [Punjab Security of Land Tenures Act, 1953](#) - Sections 17A; [East Punjab Utilization of Lands Act, 1949](#) - Sections 3

Appeal No. : Regular Second Appeal No. 34 of 1967

Appellant : Ram Rakha

Respondent : Ramji Das

Advocate for Pet/Ap. : S. Malhthora and; Chabildas, Advs

Judgement :

Jagjit Singh, J.

(1) This second appeal is against the decree of the Additional District Judge, Hoshiarpur, dated May 17, 1966. The learned Additional District Judge confirmed the decree of the Subordinate Judge, First class, Una, in a suit to pre-empt a sale.

(2) It would be necessary to state certain facts in order that the contentions raised in the appeal may be properly appreciated. Dina Nath, Ramji Das and Smt. Savitri

Devi, widow of Banka Rama, jointly 595,603,382-Min, owned 43 Kanals and 10 Mardas of land (Khasra Nos. -- -- -- -- 29-3 0-19 1-0 603,604,606, 882-Min), -- --- - --- situated in village Bhulola.Tehsil Una. Banka 7-6 2-11 2-0 0-11 Ram was brtoher of Dina Nath and Ramji Das. Their father was Haria Ram On September 1, 1961, Dina Nath and Smt Savitri sold their two-third share in the land to Ram Rakha Mall, by a registered sale-deed. In the sale deed the sale price was mentioned to be Rs. 800.00 Ramji Das, on May 5, J 1962, instituted a suit to preempt the sale of the land on the grounds of his being a co-sharer and real brtoher of Dina Nath and the deceased husband of Smt. Savitri Devi. An averment was as well made that the sale had in fact been made for Rs. 400.00 only and the amount of Rs. 800.00 had been fictitiously entered in the sale-deed. The vendee resisted the suit by pleading that the plaintiff had no right of preemption. He mentioned in his written-statement that field Khasra Nos. 603, 604, 606 and 382-Min were held by him as a tenant and field Khasra Nos. 595 and 605 had been reclaimed by him.

(3) The Subordinate Judge decreed the suit. Against that decree, dated May 18, 1963, the defendant filed an appeal to the Senior Subordinate Judge, Hoshiarpur, but remained unsuccessful. Thereafter he preferred a second appeal which was accepted by Gurdev Singh J. of the Punjab High Court and on November 23, 1964, the case was remanded for fresh decision after allowing the appellant to produce certain evidence The respondent was as well given an opportunity to produce any evidence in rebuttal, if he so desired.

(4) After remand the case was again decreed by the Subordinate Judge, First Class, Una, on April 12, 1965. subject to payment of Rs 800 to the defendant on or before May 1, 1965. So far as the land of Khasra Nos. 603, 604 and 606 was concerned a declaration was given that the plaintiff would be entitled to its possession, as a pre-emptor, on the land being released by the Collector. Regarding the remaining land in suit a decree for possession through preemption,was passed. The defendant once again filed an appeal which was dismissed by the Additional District Judge, Hoshiarpur. Still nto being satisfied the present second appeal was filed.

(5) Admittedly 19 Kanals and 3 Marias of land (Khasra Nos. 344-Min, 603, 604 and 606) was taken possession of by the Collector, Hoshiarpur, under the provisions of section 3 of the [East Punjab Utilization of Lands Act, 1949](#). Through a deed dated December 8, 1951, that land was given on lease to Ram Rakha Mall appellant for a period of 10 years commencing from the beginning of Rabi 1952. Out of the land thus given on lease to the appellant Khasra No. 344-Min was nto part of the land whose two-thirds share was sold by Dina Nath and Smt. Savitri Devi. Thus out of the land sold Khasra Nos. 603, 604 and 606 had already been leased out by the Collector to the appellant under provisions of Act No. xxxviii of 1949.

(6) On behalf of the respondent the averment made in the plaint that the sale had in fact been made for Rs. 400.00 only was nto pressed during the trial of the suit. The plea of the appellant that he had reclaimed field Khasra No. 595 and 605 prior to the institution of the suit was held by btoh the Courts below nto to have been substantiated and that finding was nto challenged before me.

(7) It was contended by Shri Sushil Malhtora, learned counsel for the appellant, that in respect of the land of field Khasra No. 603, 604 and 606, which had been leased out by the Collector, the appellant could be regarded a tenant and, therefore, under the provisions of section 17-A of the Punjab Security of Land Tenures Act. 1953, the sale was nto preemptible. The learned counsel further urged that as partial pre-emption was nto permissible the respondent had even no right to pre-empt the sale so far the land of which the appellant was nto a tenant. Reliance was placed on Ram Sarup v. Munshi in support of his proposition that partial pre-emption is nto permissible.

(8) SUB-SECTION (1) of section 17-A of the [Punjab Security of Land Tenures Act, 1953](#), which is relevant for purposes of this case, reads as under: '17-A. (1) Ntwithstanding anything to the contrary contained in this Act or the Punjab Preemption Act, 1913, a sale of land comprising the tenancy of a tenant made to him by the landowner shall nto be pre-emptible under the Punjab Pre emption Act, 1913, and no decree of pre-emption passed after the commencement of this Act in respect of any such sale of land shall be executed by any Court : Provided that for

the purposes of This sub-section the expression tenant includes a joint tenant to whom whole or part of the land comprising the joint tenancy is sold by landowner.'

(9) If, therefore, the land of field Khasra Nos 603, 604 and 606 can be regarded to comprise the tenancy of the appellant, as contemplated by the Punjab Act X of 1953, then the sale in respect of the land of those Khasra numbers will not be preemptible under the Punjab preemption Act. The view taken by the Courts below was, however that as a result of the lease made by the Collector the appellant had not become a tenant under the landowners and therefore, the sale even in respect of the land of Khasra Nos. 603, 604 and 606 was not saved from the preemption right of the respondent.

(10) The [East Punjab Utilization of Lands Act, 1949](#), contains definition of 'tenant'. According to that definition 'tenant' means a person to whom land is leased by the Collector under the provisions of that Act. So a lessee of the Collector is undoubtedly a tenant for purposes of that Act. It was contended that such a person has also to be regarded as a tenant under the [Punjab Security of Land Tenures Act, 1953](#), so as to be able to take advantage of section 17-A,

(11) The expression 'tenant' has been defined in the Punjab Security of Land Tenures Act, 1913, to mean:-

'TENANT' has the meaning assigned to it in the Punjab Tenancy Act, 1887 (Act XVI of 1887). and includes a sub-tenant and self-cultivating lessee, but shall not include a present holder, as defined in section 2 of the Resettlement Act.'

The Punjab Tenancy Act, 1887, defines 'tenant' as under : -

'TENANT' means a person who holds land under another person, and is or but for a special contract would be, liable to pay rent for that land to that other person: but it does not include- (a) an inferior landowner, or (b) a mortgagee of the rights of a landowner, or (c) a person to whom a holding has been transferred or an estate or holding has been let in farm, under the Punjab Land Revenue Act, 1947, for the recovery of an arrear of land revenue or of a sum recoverable as such an arrear, or (d) a person who takes from the Government a lease of unoccupied land for the

purpose of subletting it.'

(12) In order to be a tenant, as defined by the Punjab Security of Land Tenures Act, 1953, a person must fulfill two conditions. He should, firstly, hold land under another person and, secondly, should be, or but for a special contract would be liable to pay rent to that person. It will be noticed that the definition does not require that the person under whom the land is held must necessarily be the owner of the land. But for their specific exclusion from the definition of 'Tenant' a person to whom a holding has been transferred, or an estate or holding has been let in farm, under the Punjab Land Revenue Act, for the recovery of an arrear of land revenue, or a person who takes from the Government a lease of unoccupied land for the purpose of subletting it, would have been regarded a tenant.

(13) The learned counsel for the respondent conceded that Rabi commences in the month of December. If so the period of ten years lease, commencing from Rabi 1952, had not expired when, on September, 1, 1961, the sale was made. The appellant was, therefore, on the date of the sale a tenant under the [East Punjab Utilization of Lands Act, 1949](#) and also fulfilled the two conditions required for being regarded as such under the [Punjab Security of Land Tenures Act, 1953](#). He held land under the Collector and the lease deed (Exhibit D. 4) shows that he was liable to pay an yearly rent of rupees six for the land to the Collector.

(14) Seth Lakshmi Chand v. Nawab Mofiz Muhammad Abduila Khan and Takan v. Ganeshi were cited by the learned counsel for the respondent. Those cases are, however, of no help as they deal with persons who claimed to be landowners and not tenants under the Punjab Security of Land Tenures Act, 1903. A reference was as well made to the case of Hukam Singh v. Hakumat Rai in which it was held that a successful preemptor is not bound by the tenancy created by the vendee after the sale in his favor. That case is obviously of no assistance.

(15) In the present case it is not necessary to consider whether or not the Collector could be regarded as a landowner. Any question a tenancy created by the vendee after the sale is also not involved. It has only to be seen whether the appellant to whom land taken in possession by the Collector was given on lease, under the provisions of the [East Punjab Utilization of Lands Act, 1949](#), could be regarded as

tenant for purposes of section 17-A of the Punjab Security of Land Tenures Act, 1953. As he fulfilled both the requirements of the definition of 'Tenant' as given in section 4(5) of Act XVI of 1887, he was a tenant and, therefore, the sale of land, comprising his tenancy, made by two of the landowners was not pre-emptible under the Punjab Pre-emption Act, 1913.

(16) To the extent of the land of Khasra Nos. 603, 604 and 606 the sale was not pre-emptible as it comprised the appellant's tenancy. In *Gurcharan Singh and others v Mahendra Singh* the dicta in *Jang, Singh v. Hurdial Singh* was referred to with approval in laying down that under section 17-A of the [Punjab Security of Land Tenures Act, 1953](#) it is the tenant who is protected and not the sale as such.

(17) The right of the respondent to pre-empt the sale, excluding the land of Khasra Nos. 603, 604 and 606, was not challenged except on the ground that there could be no partial pre-emption. The respondent was a co-sharer and brother of Dina Nath and the deceased husband of Smt Savitri. Admittedly Smt. Savitri had succeeded to the share of her husband in the land on the latter's death. The respondent therefore, had the right of pre-emption, except regarding the land comprised in the tenancy of the appellant, under sub-section (1)(b) (secondly) and (fourthly) and subsection (2)(b) (secondly) of section 15 of the Punjab Pre-emption Act, 1913.

(18) The objection regarding partial pre-emption is not tenable. The respondent did not seek to partially pre-empt the sale. It is a different matter that on account of the provisions of section 17-A of the Punjab Security of Land Tenures Act, 1953 the land comprising the tenancy of the appellant is not pre-emptible.

(19) The appeal is partly accepted and the decree appealed against in respect of the land comprised in Khasra Nos. 603, 604 and 606 is set aside and the suit to that extent is dismissed but the decree for possession in respect of two third-share of the land comprised in Khasra Nos. 595 605 .82-min 382-min hundred only), is affirmed. If the purchase money of Rs. 800.00 has not already been paid or deposited in the Court of the Subordinate judge for payment to the appellant then it shall be paid in that Court on or before February 12, 1968 and the appellant shall deliver possession of the land regarding which the suit has been decreed to the

respondent. In the event of the purchase money being paid on or before the above specified date or if it has already been paid or deposited in the Court of the Subordinate Judge for payment to the appellant, the parties shall in view of all the circumstances of the case, bear their own costs throughout. If payment is not made or has not already been made, the suit shall be deemed to be dismissed with costs Throughout.

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